

RECORDING REQUESTED BY:

Shiple Company, LLC
2631 Michelle Drive
Tustin, California 92780

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: Stephen W. Lavinger, Chief
Tiered Permitting Corrective Action Branch

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

SHIPLEY COMPANY, LLC.

TUSTIN, CALIFORNIA

County of Orange, Assessor's Parcel Number 432-471-18

This Covenant and Agreement ("Covenant") is made by and between Morton International, Inc. (the "Covenantor"), the current owner of certain property situated in the City of Tustin, County of Orange, State of California, described in Exhibit A, which is attached and incorporated by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials defined in Health and Safety Code section 25260. The Covenantor and the Department, (collectively referred to as the "Parties") intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE 1
STATEMENT OF FACTS

1.01 The Property, totaling approximately 310,000 square feet or slightly more than seven acres, is more particularly described and depicted in Exhibit "A". The Property is located at 2631 Michelle Drive in the City of Tustin, County of Orange, State of California and is identified as Lot 2 of Tract #8590 in the City of Tustin, County of Orange, State of California as per Map book 346, pages 19 through 24 inclusive of miscellaneous maps, in the office of the County Recorder of said County. The Property is located in the area generally bounded by a strip of unimproved Orange County land and interstate 5 on the north, Michelle Drive on the south, Schick Allied Van Lines land, a commercial/industrial property to the east and Apria Healthcare, also a commercial/industrial property on the west, County of Orange, State of California. This property is more specifically described as Orange County Assessor's Parcel Number 432-471-18.

1.02 The restrictions will apply to the entire Property. The Property is presently improved with: (1) Asphalt, concrete parking and walkway areas cover 148,000 square feet (48% of the total area), (2) buildings including structural foundation, walls and concrete flooring cover 95,000 square feet (31% of the total area) and (3) irrigated and non-irrigated green belts cover 67,000 square feet (22% of the total area).

1.03 Morton International Dynachem and/or its affiliates engaged in manufacturing of products for the circuit board industry on the Property from 1975 to 1993 and research and development and distribution of such products on the Property from 1975 to 2001. In 1980, Dynachem Corporation filed for and obtained interim status under the Resource Conservation and Recovery Act ("RCRA") for the container storage of hazardous waste prior to offsite transport for disposal. On June 28, 1986, the Department authorized Morton International Dynachem to operate two container storage areas on the Property pursuant to a RCRA permit. Under this authorization the Property was regulated by the Department as a hazardous waste facility, subject to the requirements of the Hazardous Waste Control Law at Health and Safety Code section 25100 et seq., and the federal RCRA, at 42 U.S.C. section 6901 et seq. On August 18, 1993, the Department issued a renewed Hazardous Waste Facility Permit to Morton Electronic Materials, which authorized the operation of two hazardous waste treatment units and continued operation of the two container storage areas on the Property. In 1994 and 1996, Morton Electronic Materials closed the two hazardous waste container storage units on the Property with the approval of the Department. On June 26, 1995, Morton Electronic Materials converted its Hazardous Waste Facility Permit status to Permit by Rule tiered permit status for the two hazardous waste treatment units and obtained authorization to operate a bottle crushing unit. On February 11, 2002, Shipley Company, LLC submitted a Permit by Rule Facility Closure Report ("PBR Closure Report") to the Orange County Health Care Agency ("OCHA") the designated Certified Unified Program Agency ("CUPA"). On February 21, 2002, OCHA accepted the closure of the hazardous waste treatment units and referred the Facility to the Department for the oversight of corrective action. On March 17, 2003, the Department

signed a Corrective Action Consent Agreement Docket Number 01/02 SCC-4274 with Shipley Company, LLC. (Agreement). Pursuant to the Agreement, Shipley Company, LLC prepared a Preliminary Endangerment Assessment (PEA) Report in accordance with the Preliminary Endangerment Assessment Guidance Manual (DTDC, 1999), which defined the nature and extent of contamination at the Property and evaluated potential human health risks.

The Department is requiring this Covenant as the corrective action for the Facility. The Department circulated for public review and comment from September 11, 2003 to October 27, 2003, the Preliminary Endangerment Assessment Report, which contained the Final Health Risk Assessment, a draft Corrective Measures Study (CMS) identifying and evaluating potential corrective measures and a draft Notice of Exemption pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et. seq. The final record of decision contained in the Statement of Basis was public noticed on January 19, 2004, and requires a Land Use Covenant to restrict future land use to industrial/commercial. The Statement of Basis also includes an Implementation and Enforcement Plan to ensure compliance with the conditions of the Land Use Covenant.

1.04 As detailed in the Final Risk Assessment approved by the Department on June 6, 2003, the subsurface soil within the first five feet below ground surface contains Volatile Organic Compounds (VOCs). These VOCs and their maximum detected concentrations are primarily Benzene (0.32 mg/kg), ethylbenzene (5.6 mg/kg), methyl ethyl ketone (3100 mg/kg), Toluene (0.32 mg/kg), m, p-xylene (61 mg/kg), o-xylene (13 mg/kg). VOCs were detected at least once in 110 of the 156 soil samples analyzed. These generally low concentrations of VOCs exist in the fill material across the Property. The Final Health Risk Assessment indicated that the estimated risks and hazard to hypothetical residential receptors on the Property, assuming unrestricted use, are slightly above the acceptable risk and hazard range based on a conservative interpretation of risk calculation parameters. Risk and hazard were both estimated to be well within the acceptable risk and hazard range for exposures associated with commercial/industrial land use. Based on the results of the Final Health Risk Assessment the Department concluded that restricting future land use of the Property to commercial/industrial use is protective of human health, safety and the environment.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the California Department of Toxic Substances Control and its successor agencies, if any.

2.02 Owner "Owner" means the Covenantor, its successors in interest and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03 Occupant. “Occupant” means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 Improvements. “Improvements” shall mean all buildings, roads, driveways, walkways, landscaped areas and paved parking areas, constructed or placed upon any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as “Restrictions”), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every one of the Restrictions: (a) shall run with the land pursuant to Health and Safety Code sections 25202.5, and 25202.6 and Civil Code section 1471; (b) shall inure to the benefit of and passes with each and every portion of the Property; (c) shall apply to and bind the respective successors in interest to the property; d) are for the benefit of, and shall be enforceable by the Department; and e) are imposed upon the entire Property unless expressly stated as applicable only to a specific portion.

3.02 Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25202.5(b), this Covenant shall be binding upon the Covenantor and all of the owners of the Property, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, their heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive Owners of the Property are expressly bound by this covenant for the benefit of the Department.

3.03 Written Notice of Hazardous Substance Release. The Owner shall prior to the sale, lease, or rental of the Property, give written notice that a release of hazardous substance has come to be located on or beneath the Property, pursuant to Health and Safety Code section 25359.7. Such written notice shall include a copy of this Covenant.

3.04 Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after the conveyance of any ownership interest in the Property (except for mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any conveyance, except as otherwise provided by law, administrative order, or specific provisions of this Covenant.

ARTICLE IV RESTRICTIONS

4.01 Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02 Prohibited Activities.

- (a) No raising of food (e.g. cattle, food, crops, cotton) shall be permitted on the property.

4.03 Advisory for Subsurface Work. The Owner shall notify any contractor engaged by the Owner to perform work involving contact with subsurface soils of the presence of hazardous materials in the subsurface.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor and/or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Covenantor and/or Owner modify or remove any improvements that violate this Covenant. Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions against the Covenantor and/or Owner as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01 Variance. Any Owner or, with the Owner's written consent, any Occupant of the Property or any portion of the Property may apply to the Department for a written variance from the provisions of this Covenant. The application shall be made in accordance with Health and Safety Code Section 25202.6.

6.02 Termination. Any Owner and/or, with the Owner's written consent, any Occupant of the Property, or any portion of the Property, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&S Code section 25202.6.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone for any purpose.

7.02 Department References. All references to the Department include successor agencies or other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Orange within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any notice ("Notice" means any demand or other communication with respect to this Covenant) each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Morton International, Inc.
 C/O Paul Connor
 Director Environmental Health and Safety
 Shipley Company, LLC
 455 Forest Street
 Marlborough, Massachusetts 01854

To Department: Stephen W. Lavinger, Chief
 Tiered Permitting Corrective Action Branch
 Department of Toxic Substances Control
 5796 Corporate Avenue,
 Cypress, California 90630

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.05 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant, as deemed necessary by the Department in order to protect the public health and safety and the environment.

7.06 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

“Covenantor”

Date: 1/30/04

Original Signed By: Edward E. Liebert

Morton International Inc.

“Department”

Date: 1/21/04

Original Signed By: Stephen W. Lavinger

Stephen W. Lavinger, Chief
Tiered Permitting Corrective
Action Branch